

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

BINANCE HOLDINGS LIMITED,

Defendant.

NO. CR23-178RAJ

**DEFENDANT BINANCE HOLDINGS
LIMITED'S SENTENCING
MEMORANDUM**

Sentencing Date: February 23, 2024
11:00 a.m.

On November 21, 2023, pursuant to an authorization executed by its shareholder Changpeng Zhao ("Mr. Zhao"), Binance Holdings Limited ("BHL") entered into a coordinated, multi-agency resolution resolving charges with the Department of Justice ("DOJ" and "Department") and claims by the Commodity Futures Trading Commission ("CFTC"), the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN"), and Office of Foreign Assets Control ("OFAC") (collectively, the "Agencies") arising out of the Agencies' investigation into violations of the Bank Secrecy Act, statutory failures to register, and the International Emergency Economic Powers Act ("IEEPA"). The terms of BHL's resolution with DOJ are memorialized in the Plea Agreement filed on November 21, 2023 (Dkt. No. 23), and amended thereafter

1 on December 11, 2023 (Dkt. No. 28) (collectively, the “Plea Agreement”). By Order
2 dated December 6, 2023 (Dkt. No. 26), the Court accepted BHL’s plea of guilty, “subject
3 to consideration of the Plea Agreement pursuant to Fed. R. Crim. P. 11.” For the reasons
4 set forth herein, BHL respectfully requests that the Court accept the binding Plea
5 Agreement under Federal Rule of Criminal Procedure 11(c)(1)(C) and sentence BHL in
6 accordance therewith. Specifically, the parties have agreed that the appropriate sentence
7 consists of: (1) \$4.316 billion in monetary penalties (in the form of a criminal fine and
8 forfeiture); (2) a mandatory special assessment of \$1200; and (3) a three-year term of
9 probation (the “Stipulated Sentence”). Dkt. No. 23, ¶ 14. For the reasons set forth
10 below, this sentence is justifiable in light of the relevant facts, including the nature of the
11 underlying offenses and the extensive remediation BHL has undertaken, and the Court
12 should accept the Plea Agreement.

13 **I. Factual Background**

14 On November 21, 2023, pursuant to the written Plea Agreement, BHL pled guilty
15 to (1) conspiracy to conduct an unlicensed money transmitting business (“MTB”), in
16 violation of Title 18, United States Code, Sections 1960(a) and 1960(b)(1)(B), and to fail
17 to maintain an effective anti-money laundering (“AML”) program under Title 31, United
18 States Code, Sections 5318(h) and 5322, in violation of Title 18, United States Code,
19 Section 371; (2) conducting an unlicensed MTB, in violation of Title 18, United States
20 Code, Sections 1960(a), 1960(b)(1)(B), and 2; and (3) violating IEEPA, under Title 50,
21 United States Code, Section 1705, and Title 31, Code of Federal Regulations, Part 560 et
22 seq. Dkt. No. 23, ¶ 2.

23 In the Plea Agreement, the parties stipulated to a statement of facts. Dkt. No. 23-
24 1. BHL admitted that, starting in August 2017 and continuing until October 2022 (the
25 “relevant period”), it operated an unlicensed MTB. Dkt. No. 23-1, ¶ 1. As to the IEEPA
26 charge, BHL acknowledged that, during the relevant period, there was a significant
27

1 number of users from certain countries and regions subject to comprehensive U.S.
2 sanctions who were trading on its platform, a substantial number of the users trading on
3 its platform were U.S. users, and its matching engine would cause U.S. users to transact
4 with users in comprehensively sanctioned jurisdictions because it did not implement
5 sufficient controls to prevent such transactions from occurring. Dkt. No. 23-1, ¶ 63.

6 The Plea Agreement also recognizes the “significant steps” BHL has taken “to
7 remediate its AML and sanctions compliance programs.” Dkt. No. 23, ¶ 8(g). These
8 steps began in the years before the Plea Agreement and prior to the October 2022 end of
9 its relevant period, and each was taken at the direction of Mr. Zhao. The Plea Agreement
10 recognizes that BHL:

- 11 • “Began implementing geofencing measures in late 2019, and continued to
12 improve its controls by using a variety of location-detection tools, including IP
13 address, phone number, and mobile carrier.” *Id.* ¶ 8(f)(i).
- 14 • “Began restricting accounts for a number of known U.S. users prior to notice
15 of the Offices’ investigation.” *Id.* ¶ 8(f)(ii).
- 16 • “Changed its terms of service to require all new users to submit to full know
17 your customer procedures in August 2021.” *Id.* ¶ 8(f)(iii).
- 18 • “Implemented full KYC requirements for all direct account holders by May
19 2022, including the use of recognized third-party vendors to verify identity and
20 assess customer risk.” *Id.* ¶ 8(f)(iv).
- 21 • “Began restricting accounts for users subject to U.S. sanctions.” *Id.* ¶ 8(f)(v).
- 22 • “Invested significant financial resources in improvements to defendant’s AML
23 and countering the financing of terrorism (‘CFT’) programs, including by
24 replacing ineffective compliance staff with experienced employees and
25 significantly increasing compliance head count.” *Id.* ¶ 8(f)(vi).
- 26
- 27

- 1 • “Implemented enterprise-wide AML/CFT and sanctions risk assessments
2 beginning in November 2022.” *Id.* ¶ 8(f)(vii).
- 3 • “Implemented Financial Action Task Force standards for AML and KYC.” *Id.*
4 ¶ 8(f)(viii).
- 5 • “Improved Defendant’s enhanced due diligence (‘EDD’) program in
6 November 2022 to cover, among other things, politically exposed persons
7 (‘PEPs’), high-risk users, applicants for limit increases, unusual corporate
8 structures, and unusual transaction activity.” *Id.* ¶ 8(f)(ix).
- 9 • “Improved employee AML/CFT training.” *Id.* ¶ 8(f)(x).
- 10 • “Increased investment in real-time and post transaction monitoring including
11 by increasing head count, enhancing internal tools, and employing recognized
12 third-party vendors—such as blockchain analytics vendors—to scan user
13 transactions and profiled.” *Id.* ¶ 8(f)(xi).
- 14 • “Updated Defendant’s sanctions policy in November 2022, improving
15 customer due diligence (‘CDD’), screening, offboarding, account blocking,
16 risk assessments, and sanctions reporting.” *Id.* ¶ 8(f)(xii).
- 17 • “Developed and implemented a comprehensive framework designed to
18 determine the nationality of enterprise users.” *Id.* ¶ 8(f)(xiv).
- 19 • “Initiated an extensive historical review to identify and offboard U.S.
20 enterprise users from the platform.” *Id.* ¶ 8(f)(xv).
- 21 • And “[a]s part of its resolution of parallel investigations by U.S. regulatory
22 agencies, committed to additional remediation.” *Id.* ¶ 8(f)(xvi).

23 In addition to these remedial measures, the Plea Agreement recognized BHL’s
24 cooperation, for which the government agreed a 20% reduction off of the low-end
25 Guideline Range was appropriate. These cooperative efforts were too undertaken at the
26 direction of Mr. Zhao. These efforts included “investigating facts and obtaining
27

1 information as requested by” DOJ; producing voluntarily a “significant amount of
2 documents located outside of the United States”; “collecting and producing voluminous
3 evidence and information to the Offices”; and “providing detailed analysis of complex,
4 on platform cryptocurrency transactions.” *Id.* ¶ 8(c).

5 In its submission, the government makes a number of claims about the Company’s
6 former CEO, Mr. Zhao, including that he “built Binance as a company that attempted to
7 operate outside the jurisdiction of any government.” The government takes liberties in
8 making statements that are unsupported by the Statement of Facts in either Mr. Zhao’s or
9 the Company’s plea agreement. *See* Dkt. No. 23-1, and Dkt. No. 23; Plea Agreement,
10 *United States v. Changpeng Zhao et al.*, 23-cv-179 (W.D. Wash. November 21, 2023).
11 Among other things, the government well knows that in the years leading up to this
12 resolution, BHL and its sister corporate entities had obtained licenses in more than a
13 dozen foreign jurisdictions. Further, as noted above, all of the compliance enhancements
14 and remediation actions listed in the Plea Agreement, including those initiated in the
15 years prior to that Agreement, were taken at Mr. Zhao’s direction while he was CEO of
16 BHL. Dkt. No. 23, ¶ 8. These measures and other aspects of the Company’s approach to
17 compliance (e.g., the safety of user assets) are a leading reason why Binance remains the
18 safest, most secure digital asset exchange in the world. Any attempts to characterize Mr.
19 Zhao and his role here differently, or to assign to him conduct outside of the Statements
20 of Facts, are a distraction for the Court in a corporate sentencing with agreed terms and
21 stipulated facts, particularly when Mr. Zhao is not a party to this proceeding.

22 II. The Plea Agreement

23 The Plea Agreement is a binding plea agreement entered into pursuant to Federal
24 Rule of Criminal Procedure Rule 11(c)(1)(C).¹ The Stipulated Sentence has two
25

26
27 ¹ Pursuant to the Plea Agreement, the parties have waived the preparation of a Pre-Sentence Investigation Report.
Dkt. 23, ¶ 14(e).

1 principal components: (1) a monetary penalty and (2) a three-year term of probation.

2 *A. Monetary Penalty*

3 The parties have stipulated to the monetary components of the Stipulated
4 Sentence, which include a criminal fine, a forfeiture amount, and a special assessment.
5 The special assessment is \$1200, as required by statute. *See* 18 U.S.C. § 3013(a)(2)(B).

6 The parties have stipulated to the calculation of the criminal fine. *First*, the
7 Government and BHL have agreed on a culpability score of seven (7), which corresponds
8 to a multiplier of 1.4 to 2.8. *Second*, the Government and BHL have agreed on a base
9 fine of \$1,612,031,763, representing the pecuniary gain obtained by BHL as a result of
10 the offense. Applying the multiplier (1.4 to 2.8) to this base fine results in an applicable
11 fine range of \$2,256,844,468 to \$4,513,688,936. Dkt. No. 23, ¶ 13. The parties have
12 agreed that a 20% discount from the low end of the Sentencing Guidelines is appropriate
13 due to the Company's cooperation and remediation, resulting in a fine of \$1,805,475,575.
14 Dkt. No. 23, ¶ 14. The 20% discount from the low-end of the range is part of a policy
15 framework first issued by the Justice Department in 2016 and periodically expanded and
16 updated to create specific incentives for Companies to cooperate with and voluntarily
17 resolve investigations.²

18 In addition to the criminal fine, BHL has consented to, and the Court has entered,
19 an Order of Forfeiture requiring payment of a money judgment in the amount of
20 \$2,510,650,588, which is comprised of \$1,612,031,763 in forfeiture attributable to the 18
21 U.S.C. § 1960 charge and \$898,618,825 in forfeiture attributable to the IEEPA charge.
22 Dkt. No. 31; Dkt. No. 23, ¶ 14(b). Thus, the total financial payment to be imposed as a
23 result of the Plea Agreement is \$4,316,126,163. That amount is payable in installments,
24
25

26
27 ² 9-46.120 – Criminal Division Corporate Enforcement and Voluntary Self Disclosure Policy, DOJ (Jan. 2023),
available at <https://www.justice.gov/media/1268756/dl?inline>.

1 with the amounts and deadlines specified in the payment terms portion of the Agreement.
2 Dkt. No. 23, ¶ 24.

3 *B. Probationary Terms*

4 In addition to the monetary penalty, the parties have agreed to a three-year term of
5 probation. During this probationary period, BHL has agreed to the imposition of a
6 number of significant terms. With authorization from its shareholder Mr. Zhao, BHL has
7 agreed that it will:

- 8 • continue to enhance its AML and sanctions compliance programs, including by
9 ensuring that these programs satisfy the elements set forth in Attachment C to
10 the Plea Agreement (Dkt. No. 23-3);
- 11 • continue to cooperate with DOJ as described in paragraph 25 of the Plea
12 Agreement (Dkt. No. 23);
- 13 • retain an independent compliance monitor (the “Monitor”) as set forth in
14 Attachment D to the Plea Agreement (Dkt. No. 23-4); and
- 15 • promptly report to DOJ any evidence or allegation of a criminal violation of
16 U.S. federal law, as described in paragraph 26 of the Plea Agreement (Dkt. No.
17 23).

18 In addition, Mr. Zhao stepped down from his management role and BHL named a new
19 CEO. *Id.* ¶ 8(f)(xiii).

20 **III. The Stipulated Sentence Is Appropriate**

21 The Stipulated Sentence is reasonable, and BHL respectfully requests that the
22 Court sentence BHL accordingly. Of course, should the Court reject the Plea
23 Agreement, both parties have retained the option to withdraw from the Plea Agreement.
24 Dkt. No. 23, ¶ 14 (“If the sentencing Court rejects the agreement of the parties regarding
25 the appropriate sentence, both [BHL] and [DOJ] reserve the right to withdraw from [the]
26 [Plea] Agreement pursuant to Rule 11(c)(1)(C) . . . and proceed to trial.”).

1 The factors set forth in 18 U.S.C. § 3553(a) weigh in favor of the Stipulated
2 Sentence, which combines a significant criminal penalty with a commitment by BHL to
3 continue to enhance its compliance program and internal controls under the supervision
4 of an independent compliance monitor. The Stipulated Sentence aligns with the
5 calculated Guideline range and is appropriate given the nature and circumstances of the
6 offense; the history and characteristics of BHL; and the need for deterrence for similar
7 conduct.

8 *A. The Stipulated Sentence Aligns with the Calculated Guideline Range*

9 As set forth above, the monetary penalty includes a criminal fine and forfeiture
10 judgment. Taken together, this monetary penalty of \$4,316,126,163 is within the
11 Guidelines range of \$2,256,844,468 to \$4,513,688,936.

12 The criminal fine is justifiably below the Guideline range. As described above,
13 the criminal fine reflects a 20% discount off the bottom of the range. *Id.* ¶ 14. As the
14 parties agreed in the Plea Agreement, this departure from the Guideline range is justified
15 by the company's cooperation and remediation efforts, which included investigating the
16 facts, providing voluminous information to the government, including information stored
17 outside of the United States, making detailed presentations to the offices, and providing
18 detailed analyses of on-platform transactions. *Id.* ¶¶ 8(c); 14. BHL also engaged in the
19 significant remedial measures listed in Section I above. Further, as mentioned
20 previously, the discount is part of a larger DOJ policy initiative to create incentives for
21 corporations to cooperate and remediate.³

22 For these reasons, the monetary component of the Stipulated Sentence aligns with
23 the Sentencing Guidelines and is presumptively reasonable.

24 *B. The Stipulated Sentence Is Supported by the 3553(A) Factors*

26
27 ³ 9-46.120 – Criminal Division Corporate Enforcement and Voluntary Self Disclosure Policy, DOJ (Jan. 2023),
available at <https://www.justice.gov/media/1268756/dl?inline>.

1 In addition to being within the Guidelines range when considered as a whole, the
2 Stipulated Sentence is sufficient to comply with the goals of sentencing. Each of the
3 factors the Court must consider in determining the reasonableness of the Stipulated
4 Sentence support its imposition here.

5 *Nature and Seriousness of the Offense and Just Punishment.* BHL acknowledges
6 that the offenses of which it has been convicted are serious. The monetary component of
7 the Stipulated Sentence is “one of the largest corporate penalties in U.S. history”⁴ and
8 settled “the largest enforcement action in the Treasury’s history.”⁵ The magnitude of the
9 Stipulated Sentence acknowledges the seriousness of the offenses of conviction and
10 provides for just punishment. Further, the Stipulated Sentence appropriately accounts for
11 mitigating factors, including BHL’s acceptance of responsibility for its conduct, its
12 cooperation with the Agencies during the course of the investigation, and its meaningful
13 compliance improvements and remediation efforts.

14 *History and Characteristics of the Defendant.* BHL has no criminal history and
15 has never been prosecuted or convicted of offenses prior to this resolution. The
16 Stipulated Sentence appropriately accounts for this lack of criminal history.

17 *Adequate Deterrence.* The Stipulated Sentence also serves the goals of specific
18 and general deterrence. BHL has accepted responsibility, Dkt. No. 23, ¶ 13, agreed to
19 pay a significant fine, *id.*, and undergone significant remediation efforts as listed in
20 paragraph 8 of the Plea Agreement and Section I above, *id.* ¶ 8(f). BHL has also agreed
21 to continue to enhance its compliance programs and to the imposition of a monitor to
22 oversee and ensure its compliance with U.S. law. *Id.* ¶ 8(g)(h). Furthermore, BHL has
23 committed to continued cooperation and affirmatively disclosing certain evidence or
24

25 ⁴ Statement by Attorney General Merrick Garland, Press Release, U.S. Department of Justice, Binance and CEO
26 Plead Guilty to Federal Charges in \$4B Resolution (November 21, 2023), *available at*
<https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution>.

27 ⁵ Press Conference, Secretary of the Treasury Janet L. Yellen, *available at* <https://home.treasury.gov/news/press-releases/jy1926>.

allegations of criminal violations of U.S. law should they arise. *Id.* ¶¶ 25, 26. These provisions of the Plea Agreement ensure specific deterrence and protection from any future crimes. *Id.* ¶ 14.

The Stipulated Sentence also serves the goals of general deterrence. As the government set forth in its own announcement of this resolution, BHL’s plea is “historic” and will “send[] an unmistakable message to crypto and defi companies: if you serve U.S. customers, you must obey U.S. law.”⁶ The sheer size of the financial penalties, coupled with BHL’s guilty plea, is strong deterrence to an institution of any size and in particular the cryptocurrency industry.

IV. CONCLUSION

For the reasons discussed above, BHL respectfully requests that the Court accept the terms of the Plea Agreement in full.

DATED this 16th day of February, 2024.

GIBSON, DUNN & CRUTCHER LLP

/s/ Stephanie Brooker

Stephanie L. Brooker, admitted *pro hac vice*
Michael Kendall Day, admitted *pro hac vice*
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue
Washington, D.C. 20036
sbrooker@gibsondunn.com
kday@gibsondunn.com

Poonam G. Kumar, admitted *pro hac vice*
GIBSON, DUNN & CRUTCHER LLP
333 S. Grand Avenue
Los Angeles, CA 90071
pkumar@gibsondunn.com

⁶ Statement by Deputy Attorney General Lisa O. Monaco, Press Release, U.S. Department of Justice, Binance and CEO Plead Guilty to Federal Charges in \$4B Resolution (November 21, 2023), *available at* <https://www.justice.gov/opa/pr/binance-and-ceo-plead-guilty-federal-charges-4b-resolution>.

1 Jeffrey B. Coopersmith, WSBA No. 30954
2 1015 Second Avenue, Floor 10
3 Seattle, WA 98104-1001
4 Ph: (206) 625-8600
5 jcoopersmith@corrcronin.com

6 *Attorneys for Defendant Binance Holdings*
7 *Limited*